

## COPPER SALMON WILDERNESS ACT OF 2008

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APRIL 17, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. RAHALL, from the Committee on Natural Resources,  
submitted the following

### R E P O R T

[To accompany H.R. 3513]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3513) to amend the Oregon Wilderness Act of 1984 to designate the Copper Salmon Wilderness and to amend the Wild and Scenic Rivers Act to designate segments of the North and South Forks of the Elk River in the State of Oregon as wild or scenic rivers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Copper Salmon Wilderness Act of 2008”.

#### SEC. 2. DESIGNATION OF THE COPPER SALMON WILDERNESS.

(a) DESIGNATION.—Section 3 of the Oregon Wilderness Act of 1984 (16 U.S.C. 1132 note; Public Law 98–328) is amended—

(1) in the matter preceding paragraph (1), by striking “eight hundred fifty-nine thousand six hundred acres” and inserting “871,593 acres”;

(2) in paragraph (29), by striking the period at the end and inserting “; and”;

and

(3) by adding at the end the following:

“(30) certain land in the Siskiyou National Forest, comprising approximately 11,922 acres, as generally depicted on the map entitled ‘Copper Salmon Wilderness Proposal’ and dated April 1, 2008, to be known as the ‘Copper Salmon Wilderness’.”.

(b) MAPS AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture (referred to in this Act as the “Secretary”) shall file a map and a legal description of the Copper Salmon Wilderness with—

- (A) the Committee on Energy and Natural Resources of the Senate; and
- (B) the Committee on Natural Resources of the House of Representatives.
- (2) **FORCE OF LAW.**—The map and legal description filed under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary may correct typographical errors in the map and legal description.
- (3) **BOUNDARY.**—If the boundary of the Copper Salmon Wilderness shares a border with a road, the Secretary may only establish an offset that is not more than 150 feet from the centerline of the road.
- (4) **PUBLIC AVAILABILITY.**—Each map and legal description filed under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Forest Service.

**SEC. 3. WILD AND SCENIC RIVER DESIGNATIONS, ELK RIVER, OREGON.**

Section 3(a)(76) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(76)) is amended—

- (1) in the matter preceding subparagraph (A), by striking “19-mile segment” and inserting “28.2-mile segment”;
- (2) in subparagraph (A), by striking “; and” and inserting a period; and
- (3) by striking subparagraph (B) and inserting the following:
  - “(B)(i) The approximately 0.6-mile segment of the North Fork Elk from its source in sec. 21, T. 33 S., R. 12 W., Willamette Meridian, downstream to 0.01 miles below Forest Service Road 3353, as a scenic river.
  - “(ii) The approximately 5.5-mile segment of the North Fork Elk from 0.01 miles below Forest Service Road 3353 to its confluence with the South Fork Elk, as a wild river.
  - “(C)(i) The approximately 0.9-mile segment of the South Fork Elk from its source in the southeast quarter of sec. 32, T. 33 S., R. 12 W., Willamette Meridian, downstream to 0.01 miles below Forest Service Road 3353, as a scenic river.
  - “(ii) The approximately 4.2-mile segment of the South Fork Elk from 0.01 miles below Forest Service Road 3353 to its confluence with the North Fork Elk, as a wild river.”.

**SEC. 4. PROTECTION OF TRIBAL RIGHTS.**

- (a) **IN GENERAL.**—Nothing in this Act shall be construed as diminishing any right of any Indian tribe.
- (b) **MEMORANDUM OF UNDERSTANDING.**—The Secretary shall seek to enter into a memorandum of understanding with the Coquille Indian Tribe regarding access to the Copper Salmon Wilderness to conduct historical and cultural activities.

**SEC. 5. DESIGNATION OF POTENTIAL WILDERNESS AREA, SISKIYOU NATIONAL FOREST, OREGON.**

(a) **DESIGNATION.**—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), certain National Forest System land in the State of Oregon administered by the Forest Service as part of the Siskiyou National Forest and comprising approximately 1,708 acres, as generally depicted on the map entitled “Copper Salmon Wilderness Proposal” and dated April 1, 2008, are designated as a potential wilderness area for eventual inclusion in the Copper Salmon Wilderness designated by paragraph (30) of section 3 of the Oregon Wilderness Act of 1984 (16 U.S.C. 1132 note; Public Law 98–328), as added by section 2.

(b) **MAP AND LEGAL DESCRIPTION.**—As soon as practicable after the date of the enactment of this Act, the Secretary shall file with the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a map and legal description of potential wilderness area designated by subsection (a). The map and legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in the map and description. In the case of any discrepancy between the acreage specified in subsection (a) and the map, the map shall control. The map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service.

(c) **MANAGEMENT.**—Except as provided in subsection (d) and subject to valid existing rights, the Secretary shall manage the potential wilderness area designated by subsection (a) as wilderness until its designated as wilderness under subsection (e).

(d) **ECOLOGICAL RESTORATION.**—

(1) **IN GENERAL.**—For the purposes of implementing the planned ecological restoration approved by the Decision Notice and Finding of No Significant Impact for the Environmental Assessment for the Coastal Healthy Forest Treatments, dated May 25, 2007, the Secretary may use motorized equipment and mechanized transport in the potential wilderness area until its designated as wilderness under subsection (e).

(2) LIMITATION.—To the maximum extent practicable, the Secretary shall use the minimum tool or administrative practice necessary to accomplish ecological restoration under paragraph (1) with the least amount of adverse impact on wilderness character and resources.

(e) EVENTUAL WILDERNESS DESIGNATION.—The potential wilderness area designated by subsection (a) shall be designated as wilderness on the earlier of—

(1) the date on which the Secretary publishes in the Federal Register notice that the conditions in the potential wilderness area that are incompatible with the Wilderness Act (16 U.S.C. 1131 et seq.) have been removed; or

(2) the date that is 10 years after the date of the enactment of this Act.

(f) INCORPORATION INTO COPPER SALMON WILDERNESS; ADMINISTRATION.—On its designation as wilderness under subsection (e), the potential wilderness area designated by subsection (a) shall be—

(1) incorporated into the Copper Salmon Wilderness; and

(2) administered in accordance with the Wilderness Act, the Oregon Wilderness Act of 1984, and other laws applicable to the Copper Salmon Wilderness, except that, with respect to the potential wilderness area, any reference in the Wilderness Act to the effective date of that Act shall be deemed to be a reference to the date on which the lands are designated as wilderness under subsection (e).

#### PURPOSE OF THE BILL

The purpose of H.R. 3513 is to amend the Oregon Wilderness Act of 1984 (P.L. 98–328) to designate the Copper Salmon Wilderness and to amend the Wild and Scenic Rivers Act to designate segments of the North and South Forks of the Elk River in the State of Oregon as wild and scenic rivers, and for other purposes.

#### BACKGROUND AND NEED FOR LEGISLATION

H.R. 3513, as amended, designates 11,922 acres of the Rogue River-Siskiyou National Forest in Oregon as wilderness, 1,708 acres of the Rogue River-Siskiyou National Forest as potential wilderness, and 10.8 miles of river as wild and scenic.

Adjacent to the eastern boundary of the Grassy Nob Wilderness, the Copper Salmon area includes the North and South Forks of the Elk River and the upper Middle Fork of Sixes River. The area contains one of the nation's largest remaining stands of low-elevation old-growth forest. This area includes the last remaining stands of Port Orford Cedars in the Elk River watershed. The fisheries of the Elk River are known as one of the best salmon and steelhead producers in the continental United States.

H.R. 3513 has broad support from Oregon Governor Kulongoski, the Curry County Commission, the Mayor of Port Orford, the Port Orford Chamber of Commerce, the Friends of the Elk River, Trout Unlimited, and the American Fisheries Society (Oregon Chapter).

#### COMMITTEE ACTION

H.R. 3513 was introduced on September 10, 2007 by Representative Peter DeFazio (D-OR). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on National Parks, Forests, and Public Lands. On November 13, 2007, the Subcommittee on National Parks, Forests, and Public Lands held a legislative hearing on the bill.

On April 2, 2008, the Full Natural Resources Committee met to consider H.R. 3513. The Subcommittee on National Parks, Forests and Public Lands was discharged from further consideration of the bill. Representative DeFazio offered an amendment in the nature of a substitute to make technical changes to the map, designate

1,708 acres of plantations within the wilderness boundary as potential wilderness for ten years to allow ecological restoration work, add language regarding boundary offsets from roads, and add a new section regarding the protection of tribal rights. The amendment in the nature of a substitute was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

Section 1 cites the short title of this Act as the “Copper Salmon Wilderness Act”.

##### *Section 2. Designation of the Copper Salmon Wilderness, Oregon*

Section 2(a) amends the Oregon Wilderness Act of 1984 to designate approximately 11,922 acres of the Siskiyou National Forest as wilderness.

Section 2(b)(3) states that if the boundary of the Copper Salmon Wilderness shares a border with a road, the Secretary may establish as offset that is not more than 150 feet from the centerline of the road.

The Committee is aware that some National Forest lands designated as Wilderness by H.R. 3513 contain culverts. The Committee understands that some of the culverts are in disrepair. In fact, in 2002, the General Accounting Office reported that the Forest Service’s culvert maintenance backlog totaled \$331 million in Washington and Oregon (GAO-02-596T). The GAO report concludes that the Forest Service has not made sufficient funds available for culvert maintenance.

The Committee anticipates that the Forest Service will eventually remove most, if not all, of the culverts after this area is designated as wilderness. In particular, the Blackberry Creek culvert is a tremendous obstacle for salmon and steelhead. The Rogue River-Siskiyou National Forest has identified this 10 foot high by 110 foot long fish passage barrier as a top ten priority for removal in the Forest, to be replaced with a bridge. Removal of this barrier will add fish to the Elk River system, benefitting the sport and commercial fishing industries that are an integral part of the local economy. The Committee anticipates that removal of the Blackberry Creek culvert will be a funding and ecological priority for the Forest Service. However, the Committee is aware that such removal may not occur in a timely manner given the current state of the Forest Service’s maintenance backlog. In the interim, the Forest Service may find that continued maintenance is necessary with respect to a particular culvert or culverts in order to avoid damage to fisheries and soil resources.

Section 4(c) of the Wilderness Act prohibits, among other things, the use of motor vehicles, motorized equipment, or other forms of mechanized transport, “except as necessary to meet minimum requirements for the Administration of the area for the purpose of this Act . . .” The Committee believes that the Forest Service’s ability to properly maintain affected culverts can be accomplished consistent with this authority. The Committee recognizes that the Forest Service may determine that the use of motorized or mecha-

nized equipment is necessary to accomplish maintenance activities. In fact, the Committee notes that the federal land management agencies' wilderness management guidelines explicitly state that the term "minimum tool" is not synonymous with "primitive tool" and in some cases an agency may determine that "minimum tool" includes motor vehicles, or other motorized or mechanized equipment.

*Section 3. Wild and Scenic River designations, Elk River, Oregon*

Section 3 amends the Wild and Scenic Rivers Act to designate approximately 10.8 miles of the North Fork Elk and South Fork Elk Rivers as wild and scenic.

*Section 4. Protection of tribal rights*

Section 4(a) states that nothing in the Act shall be construed as diminishing any right of any Indian Tribe.

Section 4(b) requires the Secretary to enter into a memorandum of understanding with the Coquille Indian Tribe regarding access to the Copper Salmon Wilderness to conduct historical and cultural activities.

*Section 5. Designation of potential wilderness area, Siskiyou National Forest, Oregon*

Section 5(a) designates 1,708 acres of the Siskiyou National Forest as potential wilderness for eventual inclusion in the Copper Salmon Wilderness.

Section 5(c) and 5(d) state that the Secretary shall manage the potential wilderness as wilderness with the exception of allowing for implementation of the planned ecological restoration approved by the Decision Notice and Finding of No Significant Environmental Impact for the Environmental Assessment for Coastal Healthy Forest Treatments, dated May 25, 2007.

Section 5(d) allows the Secretary to use motorized equipment and mechanized transport in the potential wilderness area for the ecological restoration activities until it is designated as wilderness.

Section 5(d) further requires that to the maximum extent practicable, the Secretary shall use the minimum tool or administrative practice necessary to accomplish the ecological restoration activities in the potential wilderness.

Section 5(f) states that the potential wilderness area shall be designated as wilderness on the earlier of the date on which the Secretary publishes in the Federal Register notice that the conditions in the potential wilderness area that are incompatible with the Wilderness Act have been removed or the date that is ten years after the enactment of the Act.

The Committee intends for Section 5 of H.R. 3513 to be used to implement the Selected Alternative of the Coastal Healthy Forest Treatments Environmental Assessment and Decision Notice signed in May of 2007 within the areas designated as potential wilderness. The Committee expects that the receipts generated from these restoration projects will be directed toward the removal of the aforementioned culverts and toward the decommissioning of roads within the proposed wilderness area.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Oregon Wilderness Act of 1984 to designate the Copper Salmon Wilderness and to amend the Wild and Scenic Rivers Act to designate segments of the North and South Forks of the Elk River in the State of Oregon as wild and scenic rivers.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

#### H.R. 3513—COPPER SALMON WILDERNESS ACT OF 2008

H.R. 3513 would designate approximately 11,900 acres of land in the Siskiyou National Forest in Oregon as the Copper Salmon Wilderness. The bill also would designate certain segments of the north and south forks of the Elk River in Oregon as wild or scenic rivers and approximately 1,700 acres of the Siskiyou National Forest as a potential wilderness area.

Assuming the availability of appropriated funds, CBO estimates that discretionary costs would increase by less than \$1 million to implement the bill. Those funds would be used to survey and mark the wilderness area as well as remove existing culverts and roads.

In addition, because a small portion of the affected area has had an environmental assessment completed, timber harvesting could occur in this area during the next 10 years under current law. Because the bill would designate the land as wilderness, some of that timber harvesting would not occur, leading to a loss of offsetting re-

ceipts. According to the Forest Service, any such activities would likely be done through the use of stewardship contracts, a program that allows the Forest Service to use proceeds from such sales, without appropriation, for various purposes. Thus, while the bill would lead to a small loss of offsetting receipts (less than \$500,000 over the 2009–2018 period), those losses would be offset by a corresponding reduction in direct spending. On balance, CBO estimates that enacting this legislation would have no net impact on direct spending and would not affect revenues.

H.R. 3513 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On March 11, 2008, CBO transmitted a cost estimate for S. 2034, the Copper Salmon Wilderness Act, as ordered reported by the Senate Committee on Energy and Natural Resources on January 30, 2008. H.R. 3513 would designate approximately 1,700 fewer acres of forest land in the Siskiyou National Forest as the Copper Salmon Wilderness than S. 2034, and would designate that land as potential wilderness for inclusion into the wilderness at a later date. The other provisions of the bill are similar, and the cost estimates for the bills are identical.

The CBO staff contact for this estimate is Tyler Kruzich. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

#### EARMARK STATEMENT

H.R. 3513 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

#### **SECTION 3 OF THE OREGON WILDERNESS ACT OF 1984**

SEC. 3. In furtherance of the purpose of the Wilderness Act the following lands in the State of Oregon comprising approximately [eight hundred fifty-nine thousand six hundred acres] *871,593 acres* and as generally depicted on maps appropriately referenced, dated May 1984; are hereby designated as wilderness, and therefore, as components of the National Wilderness Preservation System—

(1) \* \* \*

\* \* \* \* \*

(29) certain lands in the Wallowa-Whitman National Forest, which comprise approximately twenty-two thousand seven hundred acres, are generally depicted on a map entitled “Hells Canyon Wilderness Additions-Proposed”, and which are hereby incorporated in, and which shall be deemed to be part of, the Hells Canyon Wilderness as designated in Public Law 94–199[.]; and

(30) *certain land in the Siskiyou National Forest, comprising approximately 11,922 acres, as generally depicted on the map entitled “Copper Salmon Wilderness Proposal” and dated April 1, 2008, to be known as the “Copper Salmon Wilderness”.*

### WILD AND SCENIC RIVERS ACT

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SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) \* \* \*

\* \* \* \* \*

(76) ELK, OREGON.—The [19-mile segment] *28.2-mile segment* to be administered by the Secretary of Agriculture in the following classes:

(A) The 17-mile segment from the confluence of the North and South Forks of the Elk to Anvil Creek as a recreational river[; and].

[(B) the 2-mile segment of the North Fork Elk from the falls to its confluence with the South Fork as a wild river.]

(B)(i) *The approximately 0.6-mile segment of the North Fork Elk from its source in sec. 21, T. 33 S., R. 12 W., Willamette Meridian, downstream to 0.01 miles below Forest Service Road 3353, as a scenic river.*

(ii) *The approximately 5.5-mile segment of the North Fork Elk from 0.01 miles below Forest Service Road 3353 to its confluence with the South Fork Elk, as a wild river.*

(C)(i) *The approximately 0.9-mile segment of the South Fork Elk from its source in the southeast quarter of sec. 32, T. 33 S., R. 12 W., Willamette Meridian, downstream to 0.01 miles below Forest Service Road 3353, as a scenic river.*

(ii) *The approximately 4.2-mile segment of the South Fork Elk from 0.01 miles below Forest Service Road 3353 to its confluence with the North Fork Elk, as a wild river.*

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